

REMARKS

Reconsideration of this application as amended is respectfully requested.

Claims 12, 14 and 16 have been amended; and claims 1-5, 7-11, 13, 15 and 19-24 have been canceled. As such, claims 6, 12, 14, 16, 17 and 18 are in this application and are presented for the Examiner's consideration in view of the following comments.

Claims 6, 11-13 and 24 have been rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent Publication 2002/0059626 published May 16, 2002 for Lemmons (*Lemmons*). Applicants have canceled claims 11, 13 and 24; and respectfully disagree with respect to claim 6 and has amended claim 12.

Applicants' claim 6 is directed to replacing a channel that is not being viewed only if the channel that is not being viewed is available for replacement. Thus, there are at least two conditions required by Applicants' claim 6. First, that a program not be viewed and, second, that the program not being viewed is available for replacement.

In contrast, *Lemmons* is clearly different. If a channel is not being viewed – the channel is used for data transmission – either completely or partially. (*Lemmons*, see paragraphs [0032] and [0035] and FIGs. 5 and 7.) Nowhere does *Lemmons* perform an additional check if a channel is available for replacement – *Lemmons* simply replaces the channel or reduces the frame rate of the channel. As such, the Examiner's assertion that *Lemmons* also checks if the channel not being viewed is available for replacement as required by Applicants' claim 6 is simply wrong.

With regard to Applicants' claim 12, Applicants have amended claim 12 to make clear that a program is replaced as a function of the number of users that select the program. In other words, a program maybe replaced even if one user selects the program. As noted above, this is clearly different from *Lemmons* – if a channel is not being viewed by anyone – the channel is used for data transmission – either completely or partially. (*Lemmons*, see paragraphs [0032] and [0035] and FIGs. 5 and 7.) *Nowhere* does *Lemmons* describe, or suggest, using a channel for data services if that channel is being viewed by at least one user.

In view of the above, Applicants respectfully submit that claims 6 and 12 are not anticipated by *Lemmons*.

Claims 1-5, 7-10 and 14-23 have been rejected under 35 U.S.C. §103(a) as being unpatentable over *Lemmons* in view of U.S. Patent No. 7,363,643 issued April 22, 2008 to Drake et al. (*Drake*). Applicants have canceled claims 1-5, 7-10 and 10-24. Applicants respectfully disagree with respect to amended claim 14, which has also been amended to include the requirements of dependent claim 15, which has been canceled.

The combination of *Lemmons* and *Drake* does not yield the requirements of Applicants' claim 14. In particular, Applicants' claim 14 requires "a memory for storing a replaceable program channel list comprising a list of program channels and a respective current selection status, wherein the list of program channels indicates for each program channel if the program channel is replaceable". As noted above, *Lemmons* does not describe, or suggest, indicating if a channel is replaceable. Nor is this deficiency remedied by *Drake*.

In view of the above, Applicants respectfully submit that independent claim 14 is patentable over *Lemmons* in view of *Drake*. As such, dependent claims 16, 17 and 18 are also in condition for allowance.

It should be noted that claim 16 has been amended to comport with the amendments to claim 14.

As it is believed that all of the objections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited. If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that the Examiner telephone Applicant's attorney in order to overcome any additional objections that the Examiner might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 07-0832 therefor.

Respectfully submitted
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